IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 325 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KISHORBHAI BHABHUTMAL SHARMA

Versus

TRILOKINATH PARASNATH MISRA

Appearance:

MR GN DESAI for the Appellant.

MR DD VYAS for the Respondent.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 08/01/97

ORAL JUDGEMENT

Appellant who is the original plaintiff has filed this appeal under S. 96 of the Code of Civil Procedure, challenging the judgment and decree dated 31.8.1978, passed by the learned Civil Judge (SD), Navsari, in Special Civil Suit No. 53 of 1977, whereby the learned Judge dismissed the plaintiff's suit. Brief facts of the case emerging from the record of the present appeal, are

as under :

2. The appellant filed Special Civil Suit No. 53 of 1977 to recover Rs.14,500/- from the respondent on the strength of a promissory note alleged to have been executed by the respondent on 4.2.1977 at Navsari. According to the appellant, he was dealing in business of selling utensils in the name of 'Rajesh Metal Corporation'. The respondent was also doing retail business of selling utensils and was purchasing utensils from him, and therefore, they had business relations with each other. As per the say of the appellant, in the month of January, 1977, the respondent demanded Rs.15,000/- as he was in need of the amount for redeeming the land which was mortgaged at his native place in Uttar Pradesh. According to the appellant, the respondent had told him that his father and brother had come from native place and they required the amount for redemption of the land. According to the appellant, in the month of January, 1977, he had no money with him and therefore, he asked the respondent to come after one week. Thereafter on 4.2.1977 the appellant paid at his shop Rs.14,500/- to the respondent, and in consideration of that payment, the respondent executed a promissory note in favour of the appellant. It is the case of the appellant that it was agreed between the parties that the respondent shall repay the amount within one month. As the respondent did not repay the amount, the appellant had written two letters to the respondent to which no reply was given by the respondent. Thereafter the appellant had sent a registered notice dated 25.5.1977 through his advocate, calling upon the respondent to repay the amount, but the respondent had given evasive reply. The appellant therefore was constrained to file the present suit to recover Rs.14,500/- togetherwith interest and costs.

3. The respondent-defendant contested the suit by filing written statement at Ex.8, inter alia contending that he is a poor hawker selling only grams by hawking in villages and he is so poor that he is not in a position to maintain his family. Respondent contended that he was selling aluminium utensils with grams and he used to purchase scrap from villages and thereafter used to sell the same to the plaintiff-appellant. It is denied that the defendant had a shop at Village Vijalpore. It is stated by the defendant that he used to purchase utensils on very small scale from the plaintiff's shop and used to pay the amount for the same. It is denied by the defendant that he had demanded Rs.15,000/- from the plaintiff in the month of January, 1977 for the purpose of redeeming the mortgage of his land at his native

place. It is also denied that his brother and father had come from native place and in their presence the plaintiff had paid Rs.14,500/- on 4.2.1977 by executing the promissory note, at the shop of the plaintiff. The plaintiff further stated that on 9.5.1977, he had gone to the plaintiff's shop in company of one Nandlal at 10.00 a.m. to pay the dues of Rs.300/-. It is contended by the defendant that Rs.500/- were due from Nandlal to the plaintiff and as Nandlal was not able to manage for that amount, they were restrained in the plaintiff's shop and were forced to sign the so called promissory note at the point of dagger and threats. Similarly, signature of Nandlal was also obtained on another document. It is stated by the defendant that he and Nandlal were not able to read Gujarati language. It is the case of the defendant that without understanding the contents of the writings, they were forced to sign the documents. It is stated that as Nandlal refused to execute the document at the initial stage, three friends of the plaintiff who were sitting in the shop, stood up wielding knives and threatened to kill the defendant and Nandlal. It is averred that on the documents no date was mentioned. It is also averred that the defendant and Nandlal were wrongfully restrained in the shop of the plaintiff upto 8.00 p.m. The defendant has stated that on the very next day, i.e. on 10.5.1977, he had filed a criminal complaint about this incident in the court of the learned Judicial Magistrate First Class at Navsari. It is the case of the defendant that on 4.2.1977, he had not executed the promissory note, as he was not present in Navsari from 2.2.1977 to 5.2.1977 because he was ill at his native place and was admitted in Government Hospital at Aampur, District Allahabad. It is contended by the respondent that he was discharged from the hospital on 5.2.1977 and thereafter reached Navsari on 7.2.1977. On the above facts, the defendant prayed that the plaintiff's suit be dismissed with costs.

4. The learned trial Judge framed issues at Ex.12. In support of his case, the plaintiff examined himself at Ex.25 and the so called attesting witness, viz. Natvarlal Narandas Patel at Ex. 36. The defendant examined himself at Ex.38. In support of his case, the defendant examined his brother Ramcharit Parashnath at Ex.39 and Nandlal Rajnarayan at Ex.40. Documentary evidence produced by the plaintiff consisted of registered notice issued to the defendant (ex.21) and the promissory note (ex.26). In support of his case, the defendant produced copy of the criminal complaint lodged by him against the plaintiff (ex.19) and certified copy of the judgment in Spl.Civil Suit No. 54 of 1977 filed by

the plaintiff against the defendant, which ultimately came to be dismissed.

5. The learned trial Judge after appreciating the oral as well as documentary evidence, came to the conclusion that the plaintiff has failed to prove that the defendant on or about 4.2.1977 had taken loan of Rs.14,500/- and had executed a promissory note for the same. The learned trial Judge concluded that the defendant has failed to prove that his signature was taken on or about 9.5.1977 on a gujarati written stamp paper under threats and coercion. The learned trial Judge concluded that the defendant has discharged the burden of showing that there was no valid consideration for the execution of the promissory note by the defendant. It is also concluded by the learned trial Judge that the plaintiff has not satisfied the court by cogent and reliable evidence that he had paid cash amount of Rs.14,500/- to the defendant, and the only presumption which can be drawn by the court is that either the promissory note is without consideration or it is for consideration which is not valid in law. The learned trial Judge, at the end, concluded that the overall circumstances of the case show that the defendant had rebutted the presumption under S.118A of the Negotiable Instruments Act. On the basis of the above conclusions, the learned trial Judge dismissed the suit of the plaintiff which has given rise to filing of this first appeal.

6. Learned Counsel for the appellant Mr.P.G.Desai, has taken me through the entire evidence on record and has argued that once execution of the promissory note is proved, the presumption under S.118A of the Negotiable Instruments Act (for short "the Act") that it was for a valid consideration would arise. In support of his submission, the learned Counsel for the appellant has relied on the judgment in the case of KUNDAN LAL BALLARAM vs. CUSTODIAN, EVACUEE PROPERTY, BOMBAY, AIR 1961 SC 1316.

7. Learned Counsel for the Respondent Mr.D.D.Vyas has submitted that assuming for the sake of argument that execution of the promissory note is proved, even then the presumption can be rebutted by the defendant by showing that there was no valid consideration. It is argued that the plaintiff had filed Spl.Civil Suit No. 54 of 1977 against the defendant for recovery of Rs.13,053/-, and if such a huge amount of Rs.13,053/- was due from the defendant, in normal circumstances, the plaintiff would be reluctant to advance further amount of Rs.14,500/- to

the defendant. It is submitted that the defendant was a poor hawker selling grams in Villages, and he did not own any shop or house at Navsari, and looking to the financial condition of the defendant, it was impossible that the plaintiff would advance loan of such huge amount. It is further contended by the learned Counsel for the Respondent that the immediate conduct of the defendant of filing criminal complaint against the plaintiff on 10.5.1977 also shows that the signature of the defendant was obtained by force and coercion on 9.5.1977. The learned counsel further argued that Spl. Civil Suit No. 54 of 1977 was dismissed by the trial court by not believing the plaintiff's version that Rs.13,053/- was due from the defendant. The learned Counsel for the respondent further contended that the overall circumstances of the case and the cumulative effect of the evidence on record show that the plaintiff was engaged in shady transactions, and therefore, the appeal should be dismissed.

8. It is true that as per the provisions of S.118A of the Act, until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. However, this presumption is rebuttable, and in my opinion, in the present case, the defendant has rebutted the presumption by leading cogent and reliable evidence that there was no valid consideration. Therefore, the submission of the learned Counsel for the appellant that there was valid consideration, is devoid of any merit. If the evidence of the plaintiff is minutely scanned, it shows that on 27th & 28th January, 1977, he had no money to advance loan to the defendant. Therefore, it is surprising to know as to how, within 3 to 4 days, he was able to secure such a huge amount. The purpose of the defendant demanding the amount of Rs.15,000/-, as shown by the plaintiff is that the defendant wanted that amount to redeem the land which was situated at his native place. This version of the appellant is clearly destroyed by the oral evidence of the respondent. The respondent and his brother Ramcharit, have in no uncertain terms stated that their father was staying at native place and no land was mortgaged with anybody. It is also established by their evidence that on the so called date, i.e. on 4.2.1977, neither their father nor the defendant and his brother had gone to the shop of the plaintiff to take the amount of Rs.14,500/-. Therefore, the version of the plaintiff that the defendant togethergwith his father and brother

had come to take the amount, is rightly disbelieved by the learned trial Judge. To prove his case that the promissory note was executed by the defendant after Rs.14,500/- were paid to him, the plaintiff examined Natvarlal Narandas Patel at Ex.36. This so called attesting witness has tried to boost-up the plaintiff's case. He admitted in his oral testimony that in the chapter case filed by the plaintiff against his landlord Gulam Rasul, he had deposed in favour of the plaintiff. It appears that this witness is got up just to create evidence against the defendant. Normally, in a promissory note, no signature of attesting witness is obtained, but in this case, the plaintiff with an intention to make the promissory note a genuine and with valid consideration, has created the evidence of this witness. The evidence of this witness does not inspire confidence and the learned trial Judge was justified in not placing reliance on the evidence of this witness. The plaintiff has tried to take support from the books of accounts which he maintained, to show that he had advanced a loan of Rs.14,500/- to the defendant. However, in absence of any other reliable evidence, the books of accounts will not conclusively prove that the plaintiff had paid Rs.14,500/- to the defendant. It is worth-noting that the Mehtaji who had written the books of accounts was not examined by the plaintiff. The overall conduct of the plaintiff shows that he is not a truthful and reliable witness on whose evidence the court can safely place reliance and hold that he had in fact advanced a loan of Rs.14,500/- to the defendant and that there was valid consideration in the execution of the promissory note in question. The learned trial Judge had the opportunity to observe the demeanour of the plaintiff and the attesting witness Natvarlal Narandas Patel. The learned Judge is quite justified in holding that there was no valid consideration in the present case, and the plaintiff has failed to prove that the defendant had taken loan of Rs.14,500/- on 4.2.1977. Therefore, that finding is required to be upheld. It is also pertinent to note that when the amount of Rs.13,053/- was due from the defendant and the plaintiff was constrained to file suit for recovering the said amount, he would be much more reluctant to advance another amount of Rs.14,500/to the defendant. On this ground also the plaintiff's case deserves to be disbelieved. In view of the above discussion, I do not find any merit in the arguments advanced by the learned Counsel for the appellant and accordingly the appeal deserves to be dismissed.

9. As a result of the foregoing discussion, the appeal fails and is accordingly dismissed with costs.

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